

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Christian V.,

Claimant,

And

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER.

Respondent.

OAH No. L 2005030267

DECISION

The hearing of this matter was held on September 5, October 17 and 26, and December 11 and 13, 2006, at Los Angeles, California. Christine C. McCall, Administrative Law Judge, Office of Administrative Hearings, presided. South Central Los Angeles Regional Center (SCLARC, Regional Center or Service Agency) was represented by Julie Ocheltree of Enright & Ocheltree, Los Angeles. Christian V.¹ (Claimant) was represented by attorney Anna Levine, of Protection and Advocacy, Inc., Los Angeles. Claimant did not attend the hearing.

Oral and documentary evidence was received. The record was held open so that the parties could file additional written material pertaining to one medical issue² and

¹ To protect the privacy of Claimant and his family, initials are used in place of surnames throughout.

² The parties were allowed to submit additional medical literature on the issue of Noonan syndrome in children.

written closing arguments. Claimant submitted “Claimant’s Rebuttal Evidence” on December 15, 2006, consisting of two items: Genetic Syndromes Associated With Autism, (abstract) authored by J. Artigas-Pallares and Guitart-Feilubadalo M. Gabau-Vila, (Rev Neurol 2005 Jan 15; 40 Suppl 1:S151-62), designated here as Claimant’s Exhibit 26 for identification only; and Interrelations Among Social-Cognitive Skills in Young Children with Autism, authored by M. Carpenter, B. Pennington and S. Rogers, from Autism and Developmental Disorders, Vol. 32, No. 2, at pages 92, 97 (April 2002), designated here as Claimant’s Exhibit 27 for identification only. The Service Agency submitted no additional material and made no objection to Claimant’s Exhibits 26 or 27. Claimant’s Exhibit 26 was received in evidence; Claimant’s Exhibit 27 was not received in evidence as its subject matter exceeded the scope of the Order of the Administrative Law Judge allowing submission of additional material after hearing.

Closing arguments were timely received on December 20, 2006, from both parties. Service Agency’s “Respondent South Central Los Angeles Regional Center’s Closing Arguments” is hereby designated as Service Agency’s Exhibit CC for identification only. Claimant’s “Closing Brief” is hereby designated Claimant’s Exhibit 28 for identification only. The matter was deemed submitted for decision as of December 21, 2006.

The Administrative Law Judge hereby makes factual findings, legal conclusions, and orders, as follow.

ISSUE PRESENTED

The parties stipulated to the following statement of the issue: Is Claimant eligible for services from Service Agency under the Lanterman Act on the basis of autism?

FACTUAL FINDINGS

The Parties and Jurisdiction:

1. Claimant Christian V. is a 20-year old man who has exhibited delayed development, learning difficulties and emotional and social problems for much of his life. Most notably, he has a history of language delay; he did not speak until five years of age. Since pre-kindergarten, Claimant has received special education services on the basis of a variety of evolving eligibility standards, including aphasia, learning disability, auditory disability and emotionally disabled. Claimant lives with his mother and an older sister and attends school where he is enrolled in a class for emotionally disturbed students.

2. Claimant seeks services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section

4500, et seq.³ Claimant contends he suffers from autism. The Service Agency contends that he has a communication and speech disorder, and that he suffers from Dysthymic Disorder (major depression persisting for a period of at least two years), but contends that Claimant does not meet the diagnostic criteria for autism, and therefore is not legally eligible for Regional Center services on the basis of autism.

3. This proceeding began when Claimant's mother filed a fair hearing request on March 2, 2005, dated February 5, 2005, in response to the Service Agency's notice on February 1, 2005, that it found Claimant ineligible for services. The parties then participated in an informal meeting on March 31, 2005, in an attempt to resolve the matter. That was unsuccessful; on June 9, 2005, the Service Agency wrote to Claimant's mother and informed her that SCLARC's position on eligibility had not been changed by the informal meeting process. There is no dispute that jurisdiction was established in this matter.

Diagnostic Criteria and Assessment Standards

4. Autism, or Autistic Disorder, is one of several disorders defined in the Diagnostic and Statistical Manual IV, Text Revision (DSM-IV-TR), published by the American Psychiatric Association, as Pervasive Developmental Disorders.⁴ These disorders are characterized by "severe deficits and pervasive impairment in multiple areas of development," including reciprocal social interaction and communication. Autism is specifically characterized by the presence of stereotyped behavior, interests, and activities.

5. There are two main sources of criteria for determining whether Claimant has autism. The primary source is the DSM-IV-TR; the other source is the Best Practices Guidelines (Guidelines), published by the Department of Developmental Services (DDS) in 2002. The DSM-IV-TR provides the diagnostic criteria for autism and certain related disorders; the Guidelines pertain to the assessment of those conditions. The Guidelines are not a diagnostic manual, but set forth standards for screening, evaluation, and assessment of "autistic spectrum disorder" (ASD).⁵ The Guidelines do not have the force of law, and have not been adopted as regulations by DDS. Excerpts from DSM-IV-TR and the

³ All statutory references are to California Welfare and Institutions Code unless otherwise specified.

⁴ The DSM-IV-TR lists five separate disorders under the heading "Pervasive Developmental Disorders." They are Autistic Disorder, Pervasive Developmental Disorder—Not Otherwise Specified (PDD-NOS), Asperger's Disorder or Syndrome, Rhetts's Disorder, and Childhood Disintegrative Disorder. Different diagnostic criteria are set forth for each within the DSM-IV-TR.

⁵ The term "ASD", used in the Guidelines is a descriptive term, not a diagnosis. It is descriptive of three conditions on a spectrum of autism-like conditions: Autistic Disorder, PDD-NOS, and Asperger's Disorder.

Guidelines were offered in evidence as joint exhibits, and both sources were cited by the parties' witnesses during the hearing.

6. DSM—IV-TR establishes the current diagnostic criteria for autism: “The essential features of Autistic Disorder are the presence of markedly abnormal or impaired development in social interaction and communication and a markedly restricted repertoire of activity and interests.” The DSM-IV-TR further provides that the impairment must be manifest by delays or abnormal functioning in at least one of several specified areas of development before age three, limiting the diagnosis by definition to instances of early onset: “By definition, if there is a period of normal development, it cannot extend past age 3 years.” The disorder is not based on intellectual deficits, and a substantial percentage of autistic children demonstrate normal to superior cognitive function in at least one of the two major cognitive domains, verbal and non-verbal.

7. Application of the DSM-IV-TR criteria resulting in a diagnosis of autism requires sound clinical judgment based on experience, knowledge of current research and a thorough analysis of medical and school records, as well as behavioral observation. Information from parents and other family members can be critical, notwithstanding potential reporter bias and/or error.

8. The Guidelines specify that impairment in communication, rather than in language, is the key issue. “. . . it is clear that the fundamental difficulty is with communication, of which speech and language are components.” Further, the Guidelines provide that “Delays in speech and language alone are not specific to autism, nor are the presence of intact language skills contraindicated of ASD.” (Guidelines, page 60; citations omitted.)

9. Diagnosis of ASD and PDD-NOS in children and adolescents requires differentiation from other problems, such as language and sensory impairments and psychiatric illness. Depression is one of the most common coexisting syndromes found in children and adolescents with ASD. This is particularly true for “higher functioning” children who have an awareness of their difficulties. (Guidelines, page 119.) Anxiety disorders are also common in children with ASD. (*Id.*, page 120.) Differentiating ADD or ADHD from ASD can be especially difficult. (*Id.*)

Summary of Claimant's Condition, Assessments and Diagnoses:

10. In August, 2004, Claimant was assessed by School Psychologist Ernest Rivera, Ph.D., of the Los Angeles Unified School District (LAUSD), as within average range of intelligence with learning disabilities in auditory processing. Dr. Rivera also noted depression, which manifested as agitation at times, and feelings of worthlessness.

11. On October 15, 2004, Dr. Marvin Tan, Claimant's primary care physician at Kaiser Permanente Medical Group (Kaiser) in Downey, California, a Board-certified pediatrician specializing in developmental pediatrics, diagnosed Claimant with

Autism. Dr. Tan's diagnosis was based on observation of Claimant and interviews of Claimant and his older sisters. Dr. Tan did not utilize any diagnostic tests, such as the Autism Diagnostic Observation Schedule (ADOS)⁶ or the Vineland Adaptive Behavior Scales (Vineland)⁷, and he did not review Claimant's school or medical records prior to making his diagnosis. Like Dr. Rivera, Dr. Tan noted that Claimant showed depression, but Dr. Tan concluded that the depression was secondary. Dr. Tan referred Claimant to David Mallon, Licensed Clinical Social Worker at Kaiser, for therapy to address misbehavior toward girls at school and episodes of cross-dressing, and referred Claimant to SCLARC for services under the Lanterman Act based on his autism diagnosis.

12. With respect to his diagnosis of autism, Dr. Tan specifically found and stated in his report that "this disability was present before the age of three," although he made no record of the basis for that finding. Dr. Tan acknowledged in his testimony that he did not ask Claimant's family or caregivers about Claimant's development prior to his third birthday. Instead, he testified, he made a finding that the DSM-IV-TR traits were evident in Claimant prior to the age of three because Claimant's sisters said nothing to him to indicate that the behaviors specified in DSM-IV-TR were not present before Claimant turned three.

13. Dr. Tan's finding that the DSM-IV-TR criteria were apparent in Claimant before the age of three was not persuasive in that his basis for that finding, as set forth in Factual Finding 12, was not logical or reasonable.

14. Dr. Tan had examined Claimant in 1995, but he did not diagnose autism at that time, nor did he make any records after that examination of symptoms or behaviors in Claimant that are specified as autistic criteria in the DSM-IV-TR. Dr. Tan examined Claimant again in 1997, and, again, did not diagnose autism. During that examination, however, he noted and recorded "autistic features," characteristics which, by Dr. Tan's testimony, do not necessarily constitute autism. After the 1995 and 1997 examinations, Dr. Tan referred Claimant to SCLARC for evaluation.

15. On December 28, 2004, at the request of SCLARC, Lisa M. Doi, Ph.D., Licensed Psychologist, evaluated Claimant for Lanterman Act eligibility based on autism. Dr. Doi's evaluation included review of Claimant's medical and developmental history, based on reports from family, and of school and medical records. Dr. Doi also administered several diagnostic tests, including ADOS and the Vineland. She conducted a clinical interview and behavioral observation of Claimant. Dr. Doi concluded that Claimant functions in the mild deficit range in daily living skills and socialization abilities, and in the borderline range in communication skills. She found that a diagnosis of Pervasive Developmental

⁶ The ADOS is a diagnostic tool which elicits autistic behaviors if autism is present.

⁷ The Vineland is a diagnostic tool which assesses individual development in several major life areas. The Vineland results in scores which can be compared and contrasted with age-based norms.

Disorder was not appropriate, and diagnosed Dysthymic Disorder. Dr. Doi recommended continuation of Claimant's individual therapy for his symptoms of depression and social-emotional difficulties; family therapy to address problem-solving skills, coping strategies, stress management and individual versus familial expectations; and further assessment of Claimant to rule out the presence of a personality disorder or other psychiatric illness.

16. On the ADOS administered by Dr. Doi, Claimant's scores were below the sub-threshold for autistic spectrum. On the Vineland test, Claimant's scores were 29 in the communication domain, less than 20 on the domain of daily living skills, and less than 20 on the socialization domain. The Vineland scores indicate substantial impairment, and show low age equivalents, but the results are not consistent with autism. Dr. Doi's testimony, however, stressed that the Vineland is only "one piece of the puzzle," and not reliable as a sole diagnostic tool.

17. Subsequent to the assessment and diagnosis by Dr. Doi, Paula B. Firestone, Ph.D., Licensed Psychologist, conducted an assessment of Claimant on Claimant's behalf because he was denied eligibility by SCLARC following the diagnosis of Dysthymia by Dr. Doi.⁸ Dr. Firestone's assessment included interviews of Claimant and family members, review of some of Claimant's medical and school records, review of Dr. Doi's assessment of Claimant, and administration of the Vineland test. Dr. Firestone did not administer ADOS because she believes the scores of ADOS or other autism diagnostic tools are less reliable and accurate than her clinical observations and conclusions. Dr. Firestone did administer the Vineland and found that, in all areas assessed by the Vineland, Claimant's adaptive functioning was markedly delayed and significantly impaired. Dr. Firestone diagnosed Autistic Disorder (high functioning), and ruled out depression.

18. Dr. Firestone specifically found that Claimant showed "significant developmental delays and differences prior to 3 years old, in that he did not talk, he isolated himself from peers, he had poor eye contact, he did not come when he was called and he was preoccupied with cars." Her report does not state the source of the information on which she relied in making the findings of Claimant's condition prior to the age of three.

19. On February 1, 2005, in an eligibility determination for SCLARC, an inter-disciplinary team, led by Dr. Peter Adler, Ph.D., Licensed Psychologist, concluded that Claimant suffers from Dysthymic Disorder, but that he does not have autism and is not developmentally disabled. The inter-disciplinary team included a Licensed Clinical Social Worker, Intake Service Coordinator, Nurse Consultant, Education Specialist and Medical Doctor.

20. In testimony, Dr. Adler acknowledged that some of Claimant's behaviors are consistent with autism. The SCLARC Team's conclusion that autism is not

⁸ Dr. Firestone's Psychological Evaluation Report of Claimant is dated March 17, 2004. However, in her testimony, Dr. Firestone identified that date as error and stated that her assessment of Claimant occurred on March 17, 2006.

present relied in large part on Dr. Doi's assessment, and on reports in Claimant's school records which demonstrate that those behaviors of Claimant which are consistent with autism were occasional or intermittent, not pervasive, contrary to the definitional requirements "marked" and "gross." The Service Agency did not find Dr. Firestone's assessment persuasive because (1) she administered no diagnostic tests, specifically ADOS, as recommended by the Best Practices Guidelines; and (2) because she reported a number of Claimant's symptoms as occurring "at some times." In the judgment of the Regional Center Inter-disciplinary Team, autism is not intermittent; if present, it can be observed in all settings.

21. On March 31, 2005, Ehab Yacoub, M.D., reviewed Claimant's history and records for SCLARC and found that Claimant demonstrated a history of Expressive Language Disorder, but did not meet the criteria for Pervasive Developmental Disorder. The March 2005 assessment also noted that Claimant's functioning may be impaired by ADHD and Impulsive Control disorders as well as by his depression symptoms. Subsequent to the decision of the Service Agency's inter-disciplinary team, Claimant's file and records were also reviewed by Shirley Korula, M.D. Dr. Korula acknowledged in her testimony that Claimant is disabled, but he is not, in her opinion, disabled by autism. Her opinion is based in substantial measure on Claimant's history of pre-speech pointing and gesturing. These efforts are communication and are not consistent with autism, according to Dr. Korula. She suggested that Claimant may have a psychiatric disorder.

22. Subsequent to the diagnosis of autism by Dr. Tan, Claimant began ongoing behavioral therapy with David Mallon, LCSW, as set forth in Factual Finding 11. Mr. Mallon provides social coaching to Claimant with the objective of helping Claimant learn how to establish friendships. In Mr. Mallon's judgment, Claimant is not depressed, but is socially impaired, lacks insight and common sense and is not capable of independent living.

Early Assessments of Claimant

23. In July of 1989, when Claimant was 2 years and 2 months old, he was seen at Kaiser's Well Infant Clinic for a physical complaint. The record of that visit noted that Claimant should be referred for an evaluation regarding his "inability to speak." Kaiser Permanente records of his evaluation two weeks later noted that he is "not able to speak a word," but that he "follows commands and points or pulls to make himself understood." Claimant was diagnosed with aphasia and referred for speech therapy. In an initial Communication Evaluation by Kaiser's speech therapist, it was noted in Claimant's records that, at two years and eleven months, Claimant's development was delayed in all areas except motor skills, with language comprehension assessed at the 16-month level, language expression at the 14-month standard and social-personal development assessed at the 24-month level. The Kaiser physicians and speech therapist who examined and assessed Claimant before his third birthday raised questions about Claimant's I.Q., but did not consider or suspect autism or autistic spectrum disorder, even as diagnoses that should be ruled out.

24. By January of 1990, when Claimant was 2 months past the age of three, Kaiser's speech therapist conducted a reassessment and found that Claimant's receptive language had improved from the 14-month to the 26-month standard, but that his expressive language remained at the 14-month standard.

25. The Kaiser records of examinations of Claimant for delayed speech are the only evidence in the record of his condition at or near the age of three.

26. Claimant's speech difficulties and deficits persisted, and he was evaluated by numerous health care professionals at Kaiser for years. Their assessments evolved and occasionally differed, but their recommendations remained rooted in speech therapy.

27. Claimant has received special education services since 1991 when, at the age of five, LAUSD found him eligible on the basis of developmental language delays, poor motor skills and short attention span. The earliest school records made no reference to the possibility of any type of pervasive developmental disorder.

28. In 1992, when Claimant was six years old, LAUSD generated an Individual Education Program (IEP) for him. The 1992 IEP, the earliest school record in evidence, reported that: "Cristian polite and friendly. (*sic*). He tries to get along with peers. He sometimes has difficulty knowing how to interact. He sometimes seems more comfortable with adults or alone." The IEP also stated as a short-term objective: "Cristian (*sic*) will be able to play with other children rather than next to them."

29. Also reported in Claimant's first IEP were difficulties in articulation, for which he was referred to a medical doctor for clinical examination of the palate.

30. In 1994, LAUSD changed Claimant's special education eligibility classification from severe speech and language disorder to learning disabled in attention, expression and motor processing. An IEP was generated for Claimant which noted that he "usually gets along well with students and adults. He is often quite considerate and thoughtful of others' feelings. . . ." Further, it was reported there that "Christian is an outgoing and friendly child who seeks almost constant attention from adults. Other adults in the school report to be quite charmed by his politeness and 'social graces.'" The 1994 IEP also reported that Claimant was immature for his age and sought out the company of younger children, and that Claimant continued to have mechanical difficulties with some speech sounds and had a tendency to speak too softly.

31. In 1998, LAUSD recorded Claimant's special education eligibility classification as specific learning disability. In both 1997 and 1998, Claimant's IEP's reported that Claimant's social skills were sufficient.

32. IEP and LAUSD documents generated over a 14-year span, from 1991 through 2005, were received in evidence. Consistently, over the course of those years,

Claimant was described as having poor attention, difficulties following directions and problems staying on task. In later years, the documents report recurrent difficulties in forming relationships with peers. But, throughout the course of the reports, it is stated that Claimant could and would attempt to socialize.

33. Since he was five years old, the school district has assessed Claimant as learning disordered with auditory processing problems. None of Claimant's IEP's, generated during the years 1991 through 2005, cited autism, ASD or any other pervasive developmental disorder as the basis for Claimant's learning and/or social difficulties. And notably absent from the school documents and reports are observations of perseverative behaviors, obsessions with certain topics, or stereotyped interests and activities.

34. The evidence did not establish that Claimant's school problems were a function of autistic symptoms. Claimant's problems were consistent with other disorders and disabilities.

35. Claimant's older sisters, Martha C. and Olga V., were primarily responsible for daily care of Claimant in his early years because his mother was employed full-time. His sisters testified that, when Claimant was very young, it was difficult to capture his attention and that he was often non-responsive to their attentions. He communicated by pointing and gesturing, and he was undemanding and entertained himself for extended periods. He did not seem interested in playing with other children. Neither sister could recall the age at which Claimant first demonstrated these behaviors.

Claimant's Present Condition

36. Claimant's sisters testified that presently, at age 20, Claimant requires repeated instructions, that he consistently maintains poor hygiene and poor eye contact, that he repeats himself to a marked degree, and that he stands too closely and speaks too loudly when interacting with others. Further, they report, Claimant consistently fails to read others' moods or emotions. The sisters' descriptions were consistent with the testimony of Christina Cottles, a former teacher of Claimant, who testified that Claimant bragged and hijacked conversations when communicating with peers at school, and that he seemed indifferent to correction about these problems. Ms. Cottles also noted in her testimony that Claimant's mind wandered and that he was consistently unable to concentrate.

37. Despite evidence of attempts and motivation to socialize, Claimant has not been able to make friends at school or in any other context.

38. It is difficult to discern whether Claimant can not make friends because his maladaptive behaviors flow from the classic autistic behavior of being unable to read verbal and non-verbal social cues, or from some other cause such as depression which, as the Guidelines point out, can cause feelings of isolation which, in turn, affect social behavior.

39. On multiple occasions at school in the last several years, Claimant has been inappropriate with female students. He has caused concern in his teachers and dislike from his peers by overtly expressing his intentions for a personal relationship, and erroneously interpreting common courtesies and sociability from female peers as expressions of encouragement and interest in him as a boyfriend. More recently, Claimant has engaged in incidents of cross-dressing. The evidence did not establish that these behaviors reflect autism, but they may account significantly for Claimant's social isolation and/or for his feeling of social isolation.

40. As set forth in Factual Findings 28, 32, 35, 36, 37, 38 and 39, the evidence established that Claimant meets some of the criteria that establish qualitative impairments in social interaction and in communication. But the evidence did not establish that these impairments are pervasive, chronic and unremitting. Further, as set forth in Factual Findings 33 and 43, the evidence established that Claimant has and has had a variety of interests, and the evidence did not establish that Claimant has the restricted repetitive and stereotyped patterns of behavior, interests, and activities requisite to the diagnosis of autism.

41. Within the area of impaired social interaction, there is evidence, as set forth in Factual Findings 28, 32, 35, 36, 37, 38 and 39 that Claimant has failed to develop peer relationships appropriate to age level (DSM-IV-TR criterion (A)(1)(b)), and, as set forth in Factual Finding 28, 35, 36, 38 and 39, some evidence of a lack of social or emotional reciprocity (DSM-IV-TR criterion (A)(1)(d)).

42. The evidence also established qualitative impairments in communication. However, it is not clear that, as a child, Claimant lacked varied and spontaneous make-believe play (DSM-IV-TR criterion (A) (2) (d)); and many of his behavioral issues began after starting school, as set forth in Factual Finding 27, 28, 30, 31, 32, 35, 36, 37 38 and 39. As to an inability to initiate or maintain a conversation with others (DSM-IV-TR criterion (A) (2) (b)), some of the records and assessments indicated Claimant was outgoing and sociable, as set forth in Factual Findings 28, 30, 31, 32 and 22.

43. In the third area, "restricted repetitive and stereotyped patterns of behavior, interests, and activities," Claimant has not met the DSM-IV-TR criterion in a qualitative way. Motor mannerisms (DSM-IV-TR criterion (A) (3) (c)) have not been observed by teachers or the various professionals performing assessments for any length of time. Nor has there been evidence of "apparently inflexible adherence to nonfunctional routines and rituals" (DSM-IV-TR criterion (A) (3)(b).) He has not been shown to fixate on parts of objects (DSM-IV-TR criterion (A) (3)(d).) Claimant has been shown to have an intense interest in cars. However, this does not appear to be an "encompassing preoccupation" as that term is typically used in autism diagnosis because the evidence also established that Claimant is actively interested in computers, politics, weather, video games, comic books, news, music, the opposite gender and some specific potential occupations, as set forth in Factual Finding 43.

44. As set forth in Factual Finding 13, 22, 36 and 39, Claimant shows substantial functional limitations in communication skills, learning, self-direction, capacity for independent living and economic self-sufficiency. He is described as learning-disabled by the schools, as set forth in Factual Finding 30. His present living patterns do not bode well for independence or financial self-sufficiency, especially in a 20-year old man. But the evidence did not establish that Claimant suffers from autism. Critically, onset of distinctive symptoms before age three was not established by persuasive evidence. Further, the fact cannot be ignored that numerous professionals evaluated Claimant over the years of his childhood and adolescence and did not find – or even suspect – autism. In the final analysis, Claimant simply does not meet the criteria for autism, despite his many significant problems.

LEGAL CONCLUSIONS

1. Jurisdiction exists to conduct a fair hearing in the above-captioned matter, pursuant to Code section 4710.5, based on Factual Findings 2 and 3.
2. Claimant bears the burden of establishing that he is eligible for services under the Lanterman Act. (Evid. Code, §500.)
3. This case presents difficult factual questions given the disparate reports and varied past diagnoses of Claimant's conditions. For all of the years of his childhood and adolescence, no professional advanced the possibility that Claimant suffered from autism. Two recent diagnoses, set forth in Factual Findings 11, 12, 17 and 18, are unpersuasive in that they rely on findings not supported by observation, diagnostic tests or reliable records or reports. In both instances, the diagnosis rests on an assumption that autistic symptoms were present before the age of three. But neither diagnosis relied on any factual basis for that assumption, as set forth in Factual Findings 12, 13 and 18. Further, none of the assessments in this case were to the "best practices" standard. None of the assessors observed Claimant at home or in school as the Guidelines recommend.
4. Section 4512, subdivision (a), defines developmental disabilities within the meaning of the Lanterman Act as a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . This term shall include mental retardation, cerebral palsy, epilepsy, and autism.
5. Under the regulations, some conditions are excluded. They are:
 - (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual

functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

Section 4512, subdivision (a).

6. The regulation defining substantial disability is found at California Code of Regulations section 54001, subdivision (a), and provides that “substantial disability” means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age: (A) Communication skills; (B) Learning; (C) Self-care; (D) Mobility; (E) Self-direction; (F) Capacity for independent living; (G) Economic self-sufficiency.

7. Claimant has a substantial disability within the meaning of the law, as set forth in Factual Findings 16, 17, 21, 22 and 36.

8. Although Claimant has established he is substantially disabled as that term is used under the law, he must still establish that his disability is connected to the eligible condition, autism. While there is evidence that Claimant meets some of the DSM-IV-TR criteria that establish qualitative impairments in social interaction and in communication, as set forth in Factual Findings 28, 32, 35, 36, 37, 38 and 39, Claimant does not show the restricted repetitive and stereotyped patterns of behavior, interests, and activities requisite to the diagnosis, as set forth in Factual Finding 43. Further, the evidence of onset before age three was not established by persuasive evidence, as set forth in Factual Findings 12, 13, 14, 18, 23, 27 and 28. Taken as a whole, the record established Claimant as a young man who is afflicted with disabilities whose conditions substantially handicap him, but which manifested themselves well after the age of three.

9. As set forth in Factual Findings 40, 42, 43, and 44, and Legal Conclusions 3 and 8, Claimant has not carried his burden of establishing that he is autistic, and therefore entitled to benefits under the Lanterman Act under that eligibility. Claimant's appeal of the decision of non-eligibility by SCLARC must be denied.

ORDER

The appeal of Claimant Christian V. from the decision of the South Central Los Angeles Regional Center to deny him eligibility under the Lanterman Act is denied.

Dated: January 19, 2007

Christine C. McCall
Administrative Law Judge

NOTICE

THIS IS THE FINAL ADMINISTRATIVE DECISION IN THIS MATTER, AND BOTH PARTIES ARE BOUND BY IT. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN NINETY (90) DAYS OF THIS DECISION.